

HOUSE BILL NO. 359

INTRODUCED BY J. POMNICHOWSKI

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUBLIC NOTICE FOR OPENCUT OPERATION APPLICATIONS; PROVIDING FOR PUBLIC HEARINGS ON CERTAIN OPENCUT OPERATION APPLICATIONS; REVISING APPLICATION REQUIREMENTS; AMENDING SECTION 82-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for permit -- contents -- issuance -- amendment. (1) An application for a permit must be made using forms furnished by the department and must contain the following:

(a) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the estimated volume of overburden and materials to be removed;

(d) the location of the proposed opencut operation by legal description and county;

(e) the date when the opencut operation is proposed to commence; and

(f) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;

(c) a proposed plan of operation that ~~meets~~ addresses the requirements of 82-4-434; and

(d) written documentation that the landowner has been consulted about the proposed plan of operation.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the

1 area and make recommendations to the person regarding the proposed opencut operation. The person may
2 request a meeting with the department. The department shall hold a meeting if requested.

3 (4) (a) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in
4 subsections (1) and (2), the department shall, within 30 days, review the application, inspect the proposed site,
5 and notify the person whether or not the department believes that the application is acceptable. An application
6 is acceptable if it complies with all requirements of subsections (1) and (2). If the department determines that the
7 application is not acceptable, the department shall include in the notification a detailed identification of all
8 deficiencies.

9 (b) Within 30 days of receipt of the applicant's responses to the identified deficiencies, the department
10 shall notify the applicant if the application is acceptable or not. If the application is unacceptable, the notice must
11 include a detailed explanation of the remaining deficiencies.

12 (c) The department may for sufficient cause extend either or both of the 30-day review periods for an
13 additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day
14 period. The department shall include in the notification of extension the reason for the extension.

15 (d) If the application is acceptable, it must be processed pursuant to the procedures in [section 2].

16 (e) When the department determines that an acceptable application is complete pursuant to [section 2],
17 the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation
18 on the land described in the application.

19 (5) An operator may amend a permit by submitting an amendment application to the department. Upon
20 receipt of the amendment application, the department shall review it in accordance with the requirements and
21 procedures in subsection (4). If the amendment application is ~~acceptable~~ complete, the department shall issue
22 an amendment to the original permit."
23

24 **NEW SECTION. Section 2. Public notice -- hearing -- determination of complete application.** (1)
25 Upon determining that an application under 82-4-432 is acceptable, the department shall notify the applicant of
26 a 30-day notice period.

27 (2) The applicant shall:

28 (a) publish notice at least twice within 7 days after notification from the department in a newspaper of
29 general circulation in the locality of the proposed opencut operation;

30 (b) mail notice by certified mail to all property owners within 1,000 feet of the opencut operation using

1 the most current known property owners of record as shown in the records of the county clerk and recorder where
2 the proposed opencut operation is located;

3 (c) mail notice by first class mail to all property owners between 1,000 feet and 1 mile of the opencut
4 operation using the most current known property owners of record as shown in the records of the county clerk
5 and recorder where the proposed opencut operation is located;

6 (d) post notice in at least two prominent locations at the site of the proposed opencut operation, including
7 one notice posted near a public road if possible.

8 (3) The notices required in subsection (2) must contain:

9 (a) the name of the applicant and, if other than the owner of the land, the name and address of the
10 owner;

11 (b) the type of operation to be conducted;

12 (c) the estimated volume of overburden and materials to be removed;

13 (d) the location of the proposed opencut operation by legal description and county;

14 (e) a map of the proposed opencut operation and the surrounding properties;

15 (f) the date when the opencut operation is proposed to commence; and

16 (g) the address for the department where objections may be sent.

17 (4) If the department receives no objections during the 30-day notice period or within 15 days after the
18 end of the notice period, a public hearing is not required and the department shall determine if the application is
19 complete pursuant to subsection (8).

20 (5) If objections are received, the department shall set a date for a public hearing in the area of the
21 proposed opencut operation.

22 (6) The applicant shall notify objectors of the hearing and publish notice of the hearing at least twice in
23 a newspaper of general circulation in the locality of the proposed opencut operation at least 7 days before the
24 hearing.

25 (7) The department shall, within 30 days after the public hearing, notify the applicant if the application
26 is complete.

27 (8) (a) An application is complete if it is acceptable and the plan of operation satisfies the requirements
28 of 82-4-434. If the department determines that the application is not complete, the department shall include in the
29 notification a detailed identification of all deficiencies.

30 (b) Within 30 days of receipt of the applicant's responses to the identified deficiencies, the department

1 shall notify the applicant if the application is complete or not. If the application is not complete, the notice must
2 include a detailed explanation of the remaining deficiencies.

3 (c) The department may for sufficient cause extend either or both of the 30-day review periods for an
4 additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day
5 period. The department shall include in the notification of extension the reason for the extension.

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7 NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an
8 integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 2].

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10 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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